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Regional or Minority Languages : Report for the Committee of Experts

Jones, Elin Haf Gruffyd

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# EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

## New technologies, new social media and the European Charter for Regional or Minority Languages



Elin Haf Gruffydd Jones  
Jarmo Lainio (editor)  
Tom Moring  
Fatma Resit

Report for  
the Committee of Experts

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**EUROPEAN CHARTER FOR REGIONAL  
OR MINORITY LANGUAGES**

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the European Charter for Regional  
or Minority Languages**

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# Abbreviations

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<b>ComEx</b>	Committee of Experts of the ECRML
<b>ECRML</b>	European Charter for Regional or Minority Languages
<b>ICT</b>	Information and communications technology
<b>NGO</b>	Non-governmental organisation
<b>RML</b>	Regional or minority language





# Preface

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**T**he European Charter for Regional or Minority Languages (henceforth ECRML) celebrated the 25th anniversary of its adoption in 2017 and the 20th anniversary of its entry into force in 2018. It was created in 1992 as the only treaty dedicated specifically to the protection of regional or minority languages as part of Europe's cultural wealth and traditions. In the words of its preamble "the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms".

During more than twenty years of monitoring reports, it has become clear to the Committee of Experts that the environment in which the languages that are covered by the Charter are used has changed profoundly, including in the field of the media. The understanding of the media provisions of the Charter has met with increasing challenges. When the drafts of the ECRML were prepared in the 1980s and finalised in the early 1990s, traditional broadcasting of linear radio and television using analogue transmission techniques and traditional print media, provided the main media with the means for societal communication and political discourse. The growth of new technologies, the internet and new social media has changed the media landscape and the communication and information patterns of most people in Europe and elsewhere. This has had a crucial impact on the situation of regional or minority languages (henceforth RMLs) in the media, and on societal communication in general.

The ComEx has already dealt for some time with changes with regard to media structures and communication patterns in the framework of its monitoring work. In periodical state reports and the resulting monitoring work the question of the role of new media occurs in various forms. The more extensive role of *digitisation* is also becoming a topic of importance in the monitoring process. The question arises on how these should be treated in a coherent and consistent way.

In 2016 the ComEx decided to form a working group mandated with the task of looking into these questions. The working group was partly composed of the ComEx, represented by Professor Jarmo Lainio (then Vice Chair of ComEx) as the co-ordinator of the working group, and Sixto Molina, Head of the Secretariat of the ECRML, but also of external experts. These experts

included the academics Professor Tom Moring (Helsinki); Professor Elin Haf Gruffydd Jones (Aberystwyth); Professor Brigitta Busch (Vienna), member of the Advisory Committee on the Framework Convention for the Protection of National Minorities; Professor Stefan Oeter (Hamburg), a (former) longstanding member and chairman of the ComEx; and Fatma Resit, Ph.D. researcher at the University of Hamburg, whose thesis covers the technological developments in new media in the framework of the ECRML. They also contributed to the working group's report.

The working group was given the task to elaborate a report on the challenges arising from the development of new media with respect to the protection and promotion of RMLs. They were asked to meet and discuss the basic content structure of the report during two meetings, and subsequently agree on a full draft report to be presented to the ComEx. The draft was presented at the Anniversary event in June 2018 in Strasbourg. The present report contains a presentation of the analyses and findings of the external experts, as well as the ensuing discussions by the ComEx in order to summarise the ComEx's views on the adaptability of the external experts' recommendations.

The report shows a way of dealing with a changing world in a dynamic way, as foreseen in the Charter and following the working group's tasks. This adaptation is not the final one, given the fact that it is not possible to predict what the situation will be in the digital world in a few years. We are now dealing with a third digital revolution. Artificial intelligence and the development of all kinds of sensors and tracking of our digital and physical behaviour are in the present focus. It is still the belief of the working group and the ComEx that the aspects discussed here may indicate the way to change basic principles for understanding the current media field in a timely manner, or at least, initiate discussions on these aspects, for the benefit of the Charter.

The Committee of Experts wishes to express its gratitude to the working group, especially its external contributors, for the analytical parts of the report, which will undoubtedly enrich discussions on the development of media and the role of digitisation, also beyond the context of the Charter.

For the Committee of Experts of the European Charter for Regional or Minority Languages,

Rijeka, Croatia

Vesna Crnić-Grotić, Chair

Stockholm, Sweden

Jarmo Lainio, former Vice Chair, editor

# Chapter 1

## 1.1. Introduction

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### 1.1.1. About the report

This report contains three main parts:

- ▶ one core part (Chapter 2) analysing the situation of regional or minority languages (RMLs) in the field of media development and digitisation,<sup>1</sup> and the challenges of this for the monitoring of the European Charter for Regional or Minority Languages (ECRML),<sup>2</sup> written by three external experts and discussed in the working group, and,
- ▶ two chapters contributed by the Committee of Experts (henceforth the ComEx) of the ECRML.<sup>3</sup>

The first part of the latter two chapters is the present Introduction (Chapter 1), and the second part is a ComEx amendment as a final and conclusive part at the end of the report (Chapter 3). This structure of the report is based on the receipt of the analyses (Chapter 2), which constituted the main result of the working group process, and later led to the planned, subsequent discussions in the ComEx on how to understand and interpret the analyses and recommendations by the external experts of the working group. Some additional restrictions in the monitoring conditions were considered necessary additions to the analyses, in order to prepare for a follow-up of the report, and in order for readers to competently understand how the ComEx is expected to deal with the recommendations. The descriptions, analyses and comments will in their turn be followed by further review by the ComEx, including discussions on the way flexible realities and international conventions can be dealt with.

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1. The concept of ICT was considered for the report. The use of 'new technologies' and 'new media'; however, was agreed upon after discussions. Possible restrictions of ICT as a concept and the fact that the dimension of novel development was more evident in the chosen concepts were reasons given for the decision.
  2. The full text can be found at <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/text-of-the-charter>.
  3. Main parts of Chapter 2 (its sections 2.1., 2.2., 2.4. and 2.5.) were originally formulated by Professors Tom Moring and Elin Haf Gruffydd Jones, and are based on their overall analyses. Section 2.3. was edited by Elin Haf Gruffydd Jones and commented upon by Tom Moring. Section 2.3. is based on the analysis and text of Ph.D. researcher Fatma Resit. Chapters 1 and 3 were written by Jarmo Lainio.

As an extension of these discussions, the report also contributed to further considerations raised by the ongoing digitisation of social and societal communication during recent years. It was also felt that there is a need to develop a better understanding in general for how the contextual conditions in the states parties and their respective ratifications may influence to a considerable extent updated interpretations of the Charter in the monitoring process. Such considerations of the proposals in Chapter 2 are presented in Chapter 3.

### 1.1.2. The background and working group's starting points

The report by the working group is based on the needs identified by the ComEx through the years to analyse and understand how the media field has changed during the last two decades and to what extent this should have an impact on the monitoring of state reports under the ECRML. The first reactions to such changes appeared more than ten years ago, which lead to a comprehensive report on the changing media field by Professors Tom Moring (Helsinki), and Robert Dunbar (Edinburgh), in 2008.<sup>4</sup> Slowly, the ongoing changes and the parallel adaptation to the new circumstances have been developing throughout the monitoring process. In the first place, these concerned the *privatisation* of the media field, which was also anticipated in the drafting of the undertakings of the Charter. Nevertheless, since other effects of the changes were gradual and under way, no clear new guidelines for the monitoring of other articles and undertakings of the Charter were produced as a consequence of the 2008 report mentioned above. This time, from 2018-2019, changes have become even more profound, which have resulted in a summary of the present situation in this report together with recommendations and fresh considerations for the monitoring process. In addition, the focus has become more extensive and does not only concern the main article in Part III of the Charter on media, Article 11, but also other articles in the Charter, both in Part II and III, which in various ways are connected to the ongoing *digitisation* of social communication: it concerns both communication between private persons, and between public institutions, authorities and citizens.

In the plenary discussions of the ComEx in recent years regarding the challenges of interpreting the articles on media, developments other than the use per se of the internet were debated. Issues concerning the changing balance between the public and private fields of media provisions have thus caused further concern for a longer period of time. This process has been followed up

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4. Moring, T. and Dunbar R. (2008) The European Charter for Regional or Minority Languages and the media. *Regional or Minority Languages*, No. 6, Council of Europe, Strasbourg.

in this present report by introducing another main concept to that of digitisation, namely *marketisation* (see 2.2.4.).<sup>5</sup> These processes are intertwined and it can be difficult to separate the impact of one, compared to that of the other.

When the first signs of renewed needs to deal with media in more flexible ways appeared some 12-13 years ago, none of the profound and dramatic changes in the media field and for societal communication based on new technology<sup>6</sup> and new software could be foreseen. As a matter of fact, when dramatic changes took place through the introduction of *Web 2.0* around 2005, it was at the time not recognised either by experts in the field or by the ComEx to be different to other earlier steps in the development of digital communication. Only later was it distinguished as a main turning point. The possibly hesitant reaction by the ComEx to these changes was also based on one main principle of the work of the ComEx: not to deal with matters that have not yet taken place, even if signs of change are discernible or even predicted. This has contributed to some uncertainty in the monitoring of the media and of the role of new technologies.

The lag in the understanding of how important and divisive the changes were in the mid-2000s was felt in various ways by the ComEx, but also in society as a whole. For example, the new technologies have created a divide between different *demographies*,<sup>7</sup> sometimes even within the same society. This means that, in some societies, the old media and communicative needs and the new digital and more market-oriented developments function in parallel: in others, the old ways and media predominate, whereas in yet others the new ones are dominant.<sup>8</sup> In the field of protection and promotion of RMLs in and through the media, as well as among both authorities and representatives of speakers of these languages, a time lag seems to have existed in the understanding of how the media and digital communication have altered the conditions for the promotion of the languages in question, and in a different way depending on the different populations. To some extent this has in turn influenced the monitoring process, since efforts are made to take the wishes of the NGOs (non-governmental organisations) and authorities alike into account in the process. While in some cases this has led to adapting to the wishes for old

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5. *Marketisation* as a concept is also used in other contexts, but the description under 2.2.4. is the understanding of it in this report.

6. This term is used throughout the report since it is difficult to define when the need to replace it with some other concept, like ICT, was established.

7. See also Chapters 2 and 3 on this divide and the concept of demographies.

8. See also: Ferré-Pavia, C., Iñaki Zabaleta, A. G., Fernandez-Astobiza I. and Xamardo N. (2018). Internet and Social Media in European Minority Languages: Analysis of the Digitalization Process. *International Journal of Communication* 12 (2018), 1065–1086 at <https://ijoc.org/index.php/ijoc/index>.

media provisions, in others it has led to accepting the aspirations for new media provisions. In hindsight, one could claim that the ComEx, the authorities and the NGOs should have been more reactive or even proactive in their views on the changes in the media field, but this would to a large extent be somewhat anachronistic.

The report has already sparked discussions on other interpretations and matters in the monitoring of the Charter that may need to be further clarified, defined and developed. For example, in the monitoring of Article 8 on education, it would have been necessary to consider the potential of web-based distance learning and teaching of regional or minority languages (RMLs), and the use of other digital means, as a complement to face-to-face instruction. This is not discussed within the framework of the working group's tasks, but will briefly be addressed in the final chapter. Due to the widespread digitisation of public and private information distribution and communication, similar changes can today be identified for Article 9 (judicial authorities), Article 10 (administrative authorities and public services), and Article 13 (social and economic life). Details of the developments and interpretation of changes caused by digitisation under these articles are even less well known than for media. Further consideration is required to enable an improved monitoring of the additional articles mentioned above.

A final reminder, which will also be taken up in Chapter 3, is that this report may assist in renewing the monitoring of the Charter at this stage, but it may not suffice for the ComEx to cope with the effects of all ongoing and future developments in the digital realm, since they tend to change exponentially and may eventually concern all phases of social life of the speakers of RMLs, and beyond.<sup>9</sup> They may, in addition, also concern the different articles of the Charter but at different speeds. Nevertheless, the analyses by the external experts constitute a substantial update which clarifies the challenges today and form a stable basis for future ComEx considerations on how to improve the dialogue with the states parties and consequently, the implementation of the Charter.<sup>10</sup>

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9. See references to the so-called third digital revolution: <https://campaigns.tieto.com/digitalizing-your-business>; <http://knowledge.wharton.upenn.edu/article/are-you-ready-for-the-third-digital-revolution/>; [https://en.wikipedia.org/wiki/Digital\\_Revolution](https://en.wikipedia.org/wiki/Digital_Revolution).

10. In the meantime, the ComEx has strived to adapt to the changing media situation, as exemplified in 2.3.1. Nevertheless, it still lacks a coherent strategy for evaluating combined or sole provisions of either traditional or online media.

## Chapter 2

# 2.1. Introduction to Chapter 2<sup>11</sup>

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**T**he European Charter for Regional or Minority Languages (ECRML) celebrated the 25th anniversary of its adoption (2017) and the 20th anniversary of its entry into force (2018). It has become obvious in the course of twenty years of periodic reporting and monitoring that the conditions and circumstances for the languages that are covered by the Charter have changed dramatically. One such field, covered by its own article in the Charter, concerns the media. Many of its most basic conditions have changed. The image of the media landscape on which central provisions of the Charter are built has undergone dramatic changes. When the drafts of the ECRML were prepared in the 1980s and finally negotiated in the early 1990s, broadcasting of linear radio and television using analogue transmission technique and traditional print media were the sole embodiments of media organising societal communication and influencing political discourse. The expansion and gradual growth in importance of new technologies, the internet and new social media have revolutionised the media landscape and have dramatically changed the communication and information patterns of most people in Europe. This cannot remain without any influence on the situation of regional or minority languages in the media, and in societal communication in general.

In contrast, and this is of great significance for the monitoring of the Charter, the old ways and technologies have prevailed in some states, and also among certain social groups even within those states where the changes have been extensive. This has caused a multilayered knowledge and capacity divide with regard to the new technology within societies and between states. These various divides need to be taken into account in both the reporting and the monitoring process. In addition, these changes are also part of a wider digitisation<sup>12</sup> process of all societal communication, also including that between authorities and citizens. As a result, the necessary revision of the

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11. The main parts of Chapter 2 (2.1., 2.2., 2.4. and 2.5.) were originally written for this report by Professors Elin Haf Gruffydd Jones, Aberystwyth, and Tom Moring, Helsinki. Section 2.3. was originally formulated by Ph.D. student Fatma Resit, Hamburg.

12. Digitisation refers to “the action or process of digitizing; the conversion of analogue data (esp. in later use images, video, and text) into digital form”, Oxford English Dictionary (OED).

ways in which the Charter manages to cope with these changes, would have needed an even more extended approach. As a first step, however, there is a need to deal with the direct consequences for the media field, where the changes and their effects on the monitoring process are most evident. One has to remember that the importance of the media field for the protection and promotion of regional or minority languages has not decreased. In addition to the media field, however, there are some other aspects of the Charter that need to be taken into account as well in this context. These will also be dealt with in this report.

One needs to add, that even before these changes, another type of re-evaluation had to be introduced in the monitoring process, namely how to tackle the new and changing balance between public service media, which seems to be losing ground, and private media, which is both gaining ground and at the same time is fundamentally changing its ways of acting as a competitor in the media field. These changes also overlap with the emerging possibilities of digitisation for all communication, including that between authorities and citizens.

The Committee of Experts has inevitably already had to deal with these changes with regard to media structures and communication patterns in the framework of its monitoring work. In most periodical state reports and the ensuing monitoring work the question of the role of new media comes up in one form or another. These issues have also made their way into the evaluation reports of the ComEx, although almost in a haphazard way and often hidden in the details of the findings on Articles 7, 11, 12 and 14 of the Charter. It is thus far an open question to what extent these scattered statements are based on a consistent approach regarding the place of new media in the framework of the efforts to protect and promote RMLs. The persistent challenges for the monitoring of the media field at this stage need to lead to discussions on how to approach the problems. The ComEx accordingly decided in 2016 that it was time to revisit its current practice in dealing especially with new media.

To this end, it was decided to set up a working group whose tasks would be to carry out a comprehensive reassessment as follows:

- ▶ the fundamental changes happening in societal communication patterns and in the institutional media landscape shall be elaborated,
- ▶ the practice of the ComEx in dealing with the role of new media in the framework of the Charter shall be revisited, and
- ▶ recommendations on how to cope with the ongoing changes shall be developed.

One direct conclusion based on the tasks of the working group was that there is an urgent need to look into the interpretation of a number of undertakings



of the Charter, but in particular under Articles 7 and 11. The traditional understanding of the Charter provisions was dominated by an image of media arrangements that has changed substantially and progressively over time, and subsequently needs reinterpretation. The future of RMLs and their place in society and societal communication infrastructures are less and less decided by the arrangements of traditional electronic mass media, like radio and television, or by print media. In the long run, it will presumably be new media that decide on the fate of regional or minority languages in mass communication.

Such a reconstruction of the role of different media and channels of communication should be reflected in a revision of the ComEx's interpretation of the relevant Charter provisions. The subsequent analyses thus aim at influencing a number of recommendations on how to integrate the role of new media in the interpretation of these provisions and the monitoring practice.

## 2.2. Changes to media landscape: Analysis of contextual change, including for minority languages

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### 2.2.1. Outline of Chapter 2

This section will proceed by first providing a broader picture of how media's function in society has developed, with particular attention given to the changes in the functions that different forms of media have taken on through technological, economical and behavioural developments that broadly fall under the concepts of 'digitisation' and 'marketisation'. It will then discuss the consequences that have already been identified or are clearly to be expected in an RML context and will point to areas in which specific risks can be identified for each context. This will lead to a discussion of the nature of the Charter in this process, based on the understanding that the provisions of the Charter are all linked and that it is consequently important to avoid considering each provision as an isolated compartment. Attention (to be more detailed in section 2.4.) will be given here to some general provisions of Part II, Article 7 of the Charter. According to the Explanatory Report of the Charter (paragraph 39):<sup>13</sup>

Part II is general in scope and applies in its entirety to all regional or minority languages spoken on the territory of a State Party. It will be noted, however, that the use of the expression "according to the situation of each language" shows that this part is drafted so as to cater for the very great variety of language situations that may be encountered in the various European countries and within each country. In particular, in the first paragraph the States Parties are required to undertake to match their policy, legislation and practice to a number of principles and objectives. These are fairly generally defined and allow the States concerned a broad measure of discretion as regards interpretation and application (see explanations below concerning Part II).

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13. See Explanatory Report to the European Charter for Regional or Minority Languages available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?docu mentId=09000016800cb5e5>.

This supports a dynamic application of the Charter by the state party, where relevant contextual features are taken into account.

## 2.2.2. Digitisation and changes in legacy media (print)

The media environment in Europe has changed dramatically over the last 25 years, that is, since the adoption of Charter. At the time of the drafting of the Charter, only the first steps of digitisation had been taken. This did not yet affect ordinary people's media supply and use. These profound changes only emerged since the first decade of the new millennium,<sup>14</sup> creating very different media environments in different parts of Europe. The differences are seen both between states and within states between different *demographies*.<sup>15</sup> In some states, the printed press is still relatively unaffected, analogue television prevails and the web as a news portal has limited importance. In other states, the web has taken over significant parts of the advertising market, which has dramatic consequences for the business models that have supported the newspaper industry. Traditional leading countries in newspaper readership in Northern Europe have experienced a rapid decline in the printed press. While its readership is ageing, other readers looking for news are moving to the web. Thus, only a small proportion of a younger population (under 30 years) today frequently reads traditional legacy media<sup>16</sup> in print or on the web. According to a projection made in 2010, and quoted by the Swedish Press Report,<sup>17</sup> a total marginalisation of the printed press in up to 22 Council of Europe member states is foreseen within 5-12 years; including in all the larger states of the EU.<sup>18</sup> A compensation for the demise in the younger audience in the form of increasing use of legacy media on the web is unlikely, as this generation has developed its own habits that predominantly lean on social media and new online outlets.

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14. The year 2004 saw the creation of Facebook and Flickr; 2005 YouTube; 2006 Twitter.

15. Reuters Institute, Digital News Report 2017, see <http://www.digitalnewsreport.org/survey/2017/>.

16. *Legacy media* lacks a commonly accepted definition, but generally refers to traditional media (TV, radio, print media), which also have in common that they have not been interactive.

17. *Slutbetänkande av Presstödskommittén* (2013, 108), see <https://www.regeringen.se/49bb95/contentassets/d971cf74397440cd8432ed1faf036b42/oversyn-av-det-statliga-stodet-till-dagspressen-sou-201366> (Editor's note).

18. One example of this would be the transfer of the newspaper Independent in the UK, which chose in 2016, to become a web-based newspaper only; <https://www.independent.co.uk/news/media/press/the-independent-becomes-the-first-national-newspaper-to-embrace-a-global-digital-only-future-a6869736.html>.

### 2.2.3. Digitisation and changes in legacy media (broadcasting)<sup>19</sup>

Changes in broadcasting times have so far been less significant. However, the composition of the use has changed as commercial actors have a growing presence over cable and digital terrestrial networks. Public service television, where available, still has a strong position in many states, although increasingly as a result of an older audience.<sup>20</sup> The younger population has turned in particular to on-demand use that also in this media sector circumvents legacy media. Whilst the development described above is still uneven, these global trends will probably affect all media markets in Europe with some delay. One paradox in this development is that the changes will presumably hit mainstream media first, and then also influence minority media with a lag in time, but with even more severe consequences.

### 2.2.4. Effects of marketisation and digitisation for RML media

In addition to technological considerations, substantial changes have taken place in the field of the political economy of the media since the Charter came into force in 1998. During this period, there has been an expansion of globalisation and neo-liberal market economies across the economy in general, and this is similarly the case in the media sector. In this report we refer to this process as *marketisation*.

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19. Broadcasting is the transmission of audio and audiovisual content and related services and operates within a regulatory framework. Broadcasters are generally awarded licences issued by regulatory bodies and must comply with the requirements of the regulatory frameworks – both technically and in terms of content – as well as with other broader legal requirements. *Linear broadcasting* and linear viewing or listening refers to the distribution and consumption of programmes or content in real time at the time of broadcast.

*Non-linear consumption of media* refers to viewing or listening to content via catch-up or video on-demand platforms on a range of devices.

*Scheduled broadcasting* refers to radio or television programmes (audio and audiovisual content) that are organised to be distributed by the broadcaster on specific dates at specific times.

*Streamed content* refers to the delivery or the receipt of digital content from a distributor to the user, while being delivered by the provider.

*Analogue broadcasting* refers to the non-digitised technology traditionally used for broadcasting radio and television via terrestrial, satellite and cable. Unlike digital technology, analogue broadcasting does not allow for non-linear consumption.

20. Whereas *younger* is defined as an audience under 30 years of age in some studies, the delimitation of older is more open-ended. The generations older than 30 years of age, in terms of media consumption, make up a continuum with the elderly as the clearest example of traditional media users. See also additional comments in Chapter 3. (Editor's note.)

This landscape has been characterised by changes to differing degrees in the different levels of public investment in the media sector across the signatory states, leading to an overall reduction in the proportion of broadcast media produced and distributed by public sector organisations. Public service broadcasting or public sector broadcasting today represents a smaller percentage of the overall landscape when compared to the period during which the Charter was developed and adopted. Some of the consequences of this for RML media will be dealt with below.

The growth and expansion in the number of radio and television channels since 1998, largely due to digitisation, is attributable to an increase in commercial channels and in particular in the role of global players in domestic markets, as well as to the proliferation of specialist or niche channels in the digital environment. In the case of RMLs in general, the development of broadcast media – and television in particular – has its origins firmly rooted in public sector media, and depends substantially on public sector investment in order to operate. With the exception of transfrontier languages, commercial media in RMLs has not developed to the same degree as in the official language of the state. Similarly, with a few notable exceptions, RML public service broadcasters have not developed niche or specialist television channels (e.g. 24-hour news, sport, children’s programmes, drama, documentary, etc.) in parallel with these developments in the official language of the state. Thus, the combination of the following factors has resulted in a net loss for most RMLs in this sector: (a) increase in commercial broadcasting environment that is not conducive to the use of RMLs, (b) lower growth in the public sector, which has traditionally supported broadcasting in RMLs, and (c) the consequent proliferation of specialist or niche channels. In sum, this has resulted in, firstly, a reduced prominence of RML broadcasting in the overall media landscape and secondly, a continued dependence on the traditional model of a single, ‘generalist’ channel rather than the contemporary model of a suite of generalist, diverse and niche channels.

### **2.2.5. New and emerging forms of media**

Most traditional or legacy media from both print and broadcasting backgrounds have by now developed their communication repertoires to include, to some degree, a converged media approach. Radio stations produce more text-based information and video content to disseminate online. Similarly written press include audio and audiovisual material in their communication strategies

addressed to their readers and audiences.<sup>21</sup> All media forms now use social media to engage with their audiences and the traditional division between producer and consumer has become softer, so that ‘user generated content’ has become part of the media environment, and terms such as ‘prosumer’<sup>22</sup> encapsulate these widespread practices.

In some RMLs, consolidation or convergence of local press and broadcast media has led to increased professionalisation of media, including employment and career opportunities. However, in many states, no such development has occurred (as yet), and continued dependence on volunteer and activist contributions in the digital media realm is the norm.

### 2.2.6. Participatory media

This term refers to the ways in which technology allows consumers to become producers and to co-create content. According to Henry Jenkins: “‘Participatory culture’ refers to a culture in which fans and other consumers are invited to actively participate in the creation and circulation of new content.”<sup>23</sup>

‘Culture’ or ‘cultural practice’, becomes something you actively create rather than something that is produced professionally for you to passively consume. In many states, RML media already have a greater dependence on this kind of culture or practice than a language of the state in general; a higher proportion of RML media is produced in this kind of environment and in particular in the case of local media. This development poses a challenge to the Charter process to explore the question to what extent RMLs have been successful in applying a familiar cultural practice – participatory culture – in new contexts.

Article 11, the article under Part III that specifically deals with media, was drafted and the Charter entered into force in a period during which media could be defined or at least recognised as a distinct societal function. Public Relations professionals emerged in the western economies in the 1980s. However, technological changes, and in particular the practices of *Web 2.0* technologies and social media across the media and non-media organisations have blurred the lines between media as a distinct societal function (including

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21. In some countries, public media are requested to focus on their traditional outlet channels; in Sweden for example, the broadcasters Swedish Radio (SR) and Swedish Television (SVT) are required to concentrate on sound and picture. (SOU 2018:50. *Ett oberoende public service för alla. Slutbetänkande av Parlamentariska public service-kommittén*. Stockholm: Kulturdepartementet). (Editor’s note.)

22. For a clarification of the term, see below.

23. Jenkins, H. (2006) *Convergence Culture. Where Old and New Media Collide*. New York: New York University Press, see page 290.

values of journalism as a profession) and media as a means of communication between an organisation or authority and its users, consumers and citizens.

### 2.2.7. Divided public spheres

The concept of the public sphere, in which debate and dialogues take place and where broad differences in opinion can be discussed, is shrinking: it is being replaced in many cases by a tendency towards multiple public spheres, in which opinions are formed and consolidated, but with little open dialogue and where differences of opinion are limited. This is also a broader challenge for open and democratic societies.<sup>24</sup> Broader audiences are no longer a feature of media in general. Similarly, exposure to minority language media that reaches some of the users of the language that are bilingual or in other ways interested, while not in the core of the language community, is less likely to occur, as RML media becomes more marginalised in the general media environment. Online environments can hide media content that was previously visible to all parts of the population of the territories identified in the Charter.<sup>25</sup> Searching to retrieve information, news and other media content requires instead an act of choice, management of cookies and online profiling considerations.

An ongoing discussion in many states that have ratified undertakings for RMLs in regard to media is whether, and to what extent the services that aim at supporting the position and status of minorities are to be given *in* the RML, or if it would be feasible to serve bilingual speakers *on* issues of the language and related culture, but in the majority language. A trend towards the latter has recently been seen among public service broadcasters in several states (Norway and Sweden to mention two, whilst the authorities in Sweden have tabled a requirement to increase services *in* the language). In this regard, the Charter is clear: its main objective is the “protection of the historical regional or minority languages of Europe”. Thus the fulfilment of these objectives requires media services to be available and media activities to be enhanced *in* the language: these services and activities should have priority in monitoring the implementation of the Charter.

### 2.2.8. Language and technology

Technology has impacted many aspects of the Charter and particular regard in the monitoring process should be given to the advances in language technology over the past decades. We can pinpoint two specific aspects with regard

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24. <https://www.britannica.com/science/confirmation-bias>.

25. See also SOU 2018:50, Chapter 2. (Editor’s note.)

to media which require further analysis. Firstly, the use of language translation technology can allow some languages and their users to access information and engage in interlingual dialogue and conversations. An example of this would be posting a comment on Facebook in a language (such as Welsh, Catalan etc.), that is included in the suite of languages with translation technologies offered, and other friends who may not understand/read the language can immediately see a translation (of perhaps dubious quality but a translation nevertheless) and engage in the conversation. Users in Scottish Gaelic for example, which is not included in the suite of languages with translation technology offered, cannot do this and so must make a distinction at the point of writing, whether to use Scottish Gaelic or English or both. In this respect, languages excluded from translation may face further marginalisation by the choices their own speakers make in their language practice.

Secondly, language technology advances in speech and voice recognition are becoming increasingly important tools through which humans are communicating with machines in order to access information and media content. An example of this is Apple's virtual assistant Siri, which is only available in a handful of languages (not even Catalan or Irish). The spoken languages of the Charter face future challenges as this kind of technology becomes part of our daily lives. A recent study<sup>26</sup> presented by the European Parliament Research Service Scientific Foresight Unit (STOA) clearly reveals the shortcomings when developing such technologies for minority languages. Similar conclusions were also drawn in the LEARNMe White Paper on Linguistic Diversity<sup>27</sup> regarding the importance of creating sustainable digital environments and developing language technologies in minority languages.

## **2.2.9. The role of the state and its policy implications**

In the light of the Charter and the implementation of its undertakings relating to media, the geographical and demographical variations pose fundamental challenges. To put it bluntly: literally interpreted, within a foreseeable future (5-12 years) all undertakings in Article 11 (Media) that concern the printed press (11.1.e.) could turn out to be obsolete in some parts of Europe, while it will be important in other parts and is still relevant in all countries within an older population. In addition, literally interpreted, undertakings concerning

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26. See STOA, March 2017: Language Equality in the Digital Age – Towards a Human Language Project. On-line, available at [http://www.europarl.europa.eu/stoa/en/document/EPRS\\_STU\(2017\)598621](http://www.europarl.europa.eu/stoa/en/document/EPRS_STU(2017)598621).

27. [http://www.mercator-network.eu/fileadmin/network/publications\\_pdf/Learnme\\_WP\\_29-2.pdf](http://www.mercator-network.eu/fileadmin/network/publications_pdf/Learnme_WP_29-2.pdf).



broadcasting (11.1.a-c) may become partly obsolete as the terms ‘channel’ and ‘station’ lose their meaning.

At the same time new challenges in order to meet the ethos of the Charter in the field of the media arise: how to secure a visible, attractive and functional supply in minority languages, in a situation where the use of online media and on-demand media dominate the media environment? A crucial question will then be: What can the state do in this realm? A key question is whether the Charter can be understood to address the *functions* of the media, or whether it is to be interpreted in a limited sense only. This report will argue that there is strong support in the Charter and in its Explanatory Report to apply a policy of *functional equivalence*,<sup>28</sup> where state party obligations shall follow the changes in the media environment, including relevant policies and financial support that are restitutionary to the losses incurred due to these changes.

It is essential to understand that these technological shifts, while facilitating the changes that are broadly experienced today, are not the only reason, or motivator of these changes. They are socially and economically embedded, and in complex interaction with cultural features that vary along the geographical and demographical parameters discussed above. As a consequence of this developmental diversity, it is clear that a ‘one-size-fits-all’ policy is not applicable in regard to the changes that have emerged – as is the case for most of the undertakings of the Charter. Furthermore, in this new situation a context-sensitive approach must be applied proceeding through the ‘Charter as a process’ in both states parties and communities of speakers of RMLs. Whereas all undertakings relating to media still stand, certain general features in this new media environment call for revised definitions in regard to how various forms of media are defined and how their functions are assessed. These should then be applied by case and context sensitivity. A base for this interpretation is found in Part II, Article 7 of the Charter and its Explanatory Report (paragraph 39, cited above).

It is important to realise that Article 7, as it is included in Part II of the Charter, calls for the state party to follow its objectives in regard to all RMLs that reside on its territory, whether or not they have been included in the ratifications under Part III of the Charter. As will be shown in subsequent sections (particularly section 2.4.), the overarching objectives quoted above have direct relations to the media landscape. Furthermore, the developments discussed in this section have profound implications for how the objectives can materialise in the evolving media environment.

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28. For the implications of this requirement, see the introduction to section 2.4.

The overarching objectives of the Charter are also formulated in its Explanatory Report, for example in paragraph 74:

Respect for regional or minority languages and the development of a spirit of tolerance towards them are part of a general concern to develop understanding for a situation of language plurality within a State. The development of this spirit of tolerance and receptiveness through the educational system and the media is an important factor in the practical preservation of regional or minority languages.

The Explanatory Report, in paragraph 2, points to the restitutionary function of positive measures against a threat of assimilation; and paragraphs 10, and 107, point to the need for support to the languages through their continuous presence in the media, in order to raise the level of the functionality of the languages in society.

### **2.2.10. Concluding points to section 2.2.**

In the light of current developments, the implementation of the media provisions of the Charter would have to be sensitive to the following conditions that should be given heightened attention in the monitoring process.

1. In many states, the earlier definition of media as formed by television channels and programmes, radio stations and programmes, and newspapers and newspaper articles are becoming obsolete.
2. Changes in the political economy of the media towards niched services, and both relative and absolute cuts in public service broadcasting, have led to further marginalisation of media services in minority languages. The increasing use of online media and social media that hides minority languages from public attention in the media realm adds to this tendency.
3. The media environment changes at a different pace in different parts of Europe; within states there are differences in media use particularly between different age groups.
4. Today, legacy media and traditional journalism as carriers of key democratic functions of surveillance function and deliberation (see, cf., works by Harold Lasswell and Jürgen Habermas) predominantly serve an older population, whereas younger audiences tend to orient themselves towards social media and within peer groups. Public investments in media and journalism predominantly serve the former, whereas the latter predominantly operate on market conditions that do not enhance RMLs.
5. New forms of translation services, where available, are an important communicative addition for RMLs. However, as studies show (see STOA

above), their availability in RMLs tends to lag behind. Furthermore, these services do not substitute original content produced in and on matters that give voice and have particular relevance to RML speakers and their communities.

6. Whilst in many cases, social media platforms and peer group communication on social media in many cases are important additions to daily media use among RML users in their own language, the sustainability of these tools of communication is uncertain and their lifespan is often short. There is an urgent need for more sustainable and targeted media content that can interest young audiences in browsing and prosuming in their respective RMLs.
7. The general provisions and spirit of the Charter, as formulated in its preamble and as specified in Article 7, form the basis for an assessment of how successfully the Charter serves its purpose. Where such developments take place, it is therefore in breach of the spirit of the Charter not to respond to the fundamental changes in the media environment.
8. Thus the Charter must be implemented with due sensitivity to the situation in each state, while respecting *both* the media-specific undertakings included in Part III, Article 11 *and* the need to develop *functional equivalences* where earlier media structures have been eroded.

## 2.3. New Media in the Practice of the Committee of Experts – How monitoring has faced the challenge

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**T**his section outlines the ways in which ComEx reports have considered social and new media in relation to the provisions of Articles 7, 11 and 12 in the case of state party reports submitted during the period from 1 December 2000 to 30 November 2016.<sup>29</sup>

### 2.3.1. References to the media and the internet

As already noted, the most significant changes in media landscape through new or social media emerged in the mid-2000s with some differences across European states and regions. The monitoring process requires that states parties submit their reports at three-yearly intervals.<sup>30</sup> References to the use of the internet as a distribution channel were found in 45 out of 97 reports during this 16-year period and, as anticipated, with greater preponderance in the more recent reports.

As will be detailed later in the report, the ComEx already noted and reacted to the emergence of online content and internet-based media in regional or minority languages in the first years of the new millennium. However, the first detailed analysis in a ComEx report on how changes in the media landscape impact the provisions of the Charter can be found in its 3rd report on Germany in 2008. Here, the ComEx stresses that it has reviewed its approach “in the light of developments in the field of broadcast media which have taken place since the Charter was adopted in 1992”. It notes that “[T]he traditional distinction

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29. Section 2.3. was originally formulated by Ph.D. student Fatma Resit. It was adapted to the report by Professor Elin Haf Gruffydd Jones and edited by Professors Tom Moring and Jarmo Lainio. (Editor's note.)

30. As of 1 July 2019, states parties will present a comprehensive periodical report on the application of the treaty every five years and then two and a half years thereafter information on recommendations for immediate action. (Editor's note.)

between a monolithic “public service broadcaster” and private broadcasters has eroded [and that] there is now a far greater variety in delivery methods and platforms (digital television and radio, internet broadcasting, etc.) [today]”. The ComEx concludes that “together these developments call for a more flexible interpretation of Articles 11.1.b. and c.”<sup>31</sup> ComEx reiterates this statement in its 2nd report on Austria<sup>32</sup> in 2008, in its 1st report on Serbia<sup>33</sup> in 2008 and in its 4th report on Finland<sup>34</sup> in 2011.

### **2.3.2. The internet as the only distribution channel of media**

Spectrum scarcity is one of the characteristics of analogue technology whereas there are no such limitations on the internet as a distribution channel. However, new media, social media and the internet present different challenges: visibility and prominence, problems with lack of coverage or digital black holes, lower levels of digital literacy or familiarity with new platforms in certain demographic groups etc. These are important factors when considering whether internet communication should provide replacements or additionalities to the traditional distribution channels available to the media.

In the 6th report on Hungary, reference is made to the problem regarding the use of medium waves for radio programmes. These programmes are also available online, although many speakers do not have internet access and have low levels of internet literacy. ComEx recommends that the Hungarian authorities improve the “technical conditions of broadcasting” in minority languages.<sup>35</sup>

In some cases, for instance the 2nd report on Spain in 2008, the conclusion of the ComEx in the case of Valencian was that a “digitalised version” (newspapers) did not fulfil the undertaking in this context.<sup>36</sup> In its 3rd report on the Czech Republic concerning Slovak<sup>37</sup> and in its 2nd report on Poland with regard to

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31. Germany, 3rd cycle, 3 April 2008, para. 17.

32. Austria, 2nd monitoring cycle, 10 September 2008, para. 150.

33. Serbia, 1st monitoring cycle, 12 September 2008, para. 212.

34. Finland, 4th monitoring cycle, 21 September 2011, para. 181.

35. Hungary, 6th cycle, 18 March 2016, para. 63.

36. Spain, 2nd cycle, 4 April 2008, Valencian language in Valencia, para. 980. The development in Spain, however, shows that the situation and the evaluations are changing: in the fourth monitoring cycle, Galician had newspaper provisions only in digital format, which was welcomed by the ComEx. It still asked the authorities to explore the need for the promotion of at least one printed newspaper; Spain, 4th cycle, 20 March 2015, para. 700. The latest, fifth cycle of evaluation continues in the direction of increasing acceptance of online publications. (Editor’s note.)

37. Czech Republic, 3rd cycle, 17 June 2015, Slovak, para. 213.

the Lemko language,<sup>38</sup> the existence of broadcasts on internet radio in the context of Article 11.1.b.ii. is noted and more information on broadcasts of regular programmes is sought without considering the undertakings as fulfilled.

In its 4th report on Norway<sup>39</sup> ComEx notes as “interesting information” that NRK Radio (*Norsk Rikskringkasting*) “is now directing its efforts towards building up the website as the main platform for news updates in Sámi and Norwegian”. This suggests that there are positive responses to cases where both the RML and the language of the state are moving towards an enhanced online presence.

### **2.3.3. Media only present online as audio or audiovisual work**

The reports analysed also show that media exclusively present on the internet are often referred to as audio and audiovisual works within the meaning of Article 11.1.d and Article 11.1.f.ii. rather than under the ‘old media’ categories of radio, television or newspapers. This finding is supported, *inter alia* by the ComEx’s statement in its 1st report on Sweden where it calls for online content funding for example, and its 4th report on the Slovak Republic, in which it classifies online television broadcasting as an audiovisual work in the meaning of Article 11.1.d.<sup>40</sup> and the support to a Ruthenian internet radio as means of encouraging and/or facilitating the production and distribution of audio works in RMLs.<sup>41</sup>

The analysis also showed that media exclusively available online is in some contexts classified beyond the scope of Article 11.1.d. and Article 11.1.f.ii. An example can be found in the 3rd report on Hungary, in which the ComEx points out in its comments on Article 11.1.b.ii. that it has been informed about the existence of an internet radio broadcaster in Croatian, in addition to *Radio Monoster*.<sup>42</sup> Similarly in the 2nd report on Poland, the ComEx notes in the context of Article 11.1.b.ii. that the authorities provide financial assistance to the Association *Ruska Bursa* in Gorlice to run the internet radio *LEM.FM*.

In conclusion, existing media provision that has exclusively online presence is reported. Occasionally, this is reported under sections on audio or audiovisual works as well as under specified radio, television and newspaper media sections.

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38. Poland, 2nd cycle, 19 June 2015, Lemko, para. 485.

39. Norway, 4th cycle, 8 September 2009, Sámi, para. 195.

40. Slovak Republic, 4th cycle, 4 November 2015, Romani, para. 491; Sweden, 1st cycle, 6 December 2002, Meänkieli, paras. 363-366.

41. Slovak Republic, 4th cycle, 4 November 2015, Ruthenian, paras. 282 and 283.

42. Hungary, 3rd monitoring cycle, 1 December 2006, paras. 178 and 179.

### 2.3.4. Advocating and encouraging the use of the internet

The ComEx notes that it “welcomes the presence [of the regional or minority language] in online media”, not only in the most recent reports,<sup>43</sup> but also in some of the earlier reports, such as in its 1st report on Sweden in 2002 (referred to above). In its 3rd report on Hungary in 2006, the ComEx “encourages the Hungarian authorities ... to intensify its important initiatives concerning the internet”.<sup>44</sup> Similarly, in its 3rd and later in its 5th report on Switzerland, the ComEx stresses the importance of the internet for the promotion of the Yenish language, and encourages the authorities to take further measures in this regard.<sup>45</sup>

### 2.3.5. New media actors

ComEx refers to *Web 2.0* in the context of Article 7.1.d., for instance in its 5th report on the Netherlands, where it notes with regard to this undertaking that “the [Limburgish] language is also present on the internet and on social media and is increasingly used by young people”.<sup>46</sup> Furthermore, in its 5th report on Norway, in the context of Article 7.1.d., ComEx refers to a project where Sámi languages shall be strengthened through social media and reports about another project where videos are transmitted on YouTube.<sup>47</sup> Another example is its statement in its 4th report on the United Kingdom in which it states that the “[Cornish Language Partnership] CLP makes intensive use of social media, including both Facebook and Twitter, to disseminate information and engender interest”.<sup>48</sup> In the same report, it also notes that a Manx Gaelic application for smartphones and tablets has been launched.<sup>49</sup>

However, there are also examples under Article 11 where reference is made to new actors in the media sector as a result of the conditions of *Web 2.0*. Examples include the 5th report on Sweden: the ComEx observes with regard

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43. E.g. Finland, 4th cycle, 21 September 2011, Sámi, para. 304; Netherlands, 4th cycle, 22 March 2012, Limburgish, para. 25; Sweden, 5th cycle, 16 May 2014, para. 299; Spain, 4th cycle, 20 March 2015, Galician, para. 705.

44. Hungary, 3rd cycle, 1 December 2006, para. 186.

45. The ComEx encourages the authorities specifically to “pursue their dialogue with the representatives of Yenish-speakers with a view to developing [inter alia] internet radio broadcasting in Yenish”, Switzerland, 3rd cycle, 19 September 2007, Yenish, paras. 33 and 34, and to explore the possibility of the internet as an important tool in the promotion of the language in general, Switzerland, 5th cycle, 28 February 2013, Yenish, paras. 44 and 45.

46. Netherlands, 5th cycle, 16 June 2016, Limburgish, para. 43.

47. Norway, 5th cycle, 19 June 2012, Lule Sámi, para. 86.

48. United Kingdom, 4th cycle, 21 June 2013, Cornish, para. 44.

49. United Kingdom, 4th cycle, 21 June 2013, Manx Gaelic, para. 49.

to Article 11.1.a.iii., that a Swedish radio channel encouraged its listeners to the active use of Finnish by organising a *Twitter* week and welcomes it “as a useful event in order to raise awareness about minority languages and minority culture within mainstream society and through the media”.<sup>50</sup>

Similarly in the context of Article 12.1.a., the 5th report on Germany, makes reference to the plan of the Documentation Centre to create a restricted website, where people could log in and write in Romani.<sup>51</sup> Moreover, ComEx also refers to *Web 2.0* as an audiovisual production within the meaning of Article 11.1.d. For example, in its 4th report on Spain, it noted that there are some audio and audiovisual works in Aranese on *YouTube*<sup>52</sup> and a digital newspaper in Galician was also included under Article 12.1.g.<sup>53</sup>

### 2.3.6. Conclusion

To conclude, ComEx has over this period made reference in its reports to the internet, new and social media in the context of Articles 7, 11 and 12 with more frequency as the issues become more relevant and more prevalent in RML environments. These references also reflect different approaches over the years and in different contexts. It is therefore timely that further consideration is being given at this stage on how best to proceed in future reports as online media expand and develop across the parties. In other words, there is a need to develop a coherent understanding in the monitoring process for how state support for the use of RMLs on the internet and in new and social media should be interpreted.

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50. Sweden, 5th cycle, 16 May 2014, para. 299.

51. Germany, 5th cycle, 14 November 2013, Romani, para. 677.

52. Spain, 4th cycle, 20 March 2015, Aranese, para. 829.

53. Spain, 4th cycle, 20 March 2015, Galician, para.720.



## 2.4. The Charter's text in the light of new technologies: Articles 7, 11, 12 and 14

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**T**he aim of this section is to present an analysis of the texts of the four specific articles in the Charter that are of particular relevance for the use of new media in relation to minority languages: Part II Article 7 – Objectives and principles, Part III Article 11 – Media), Part III Article 12 – Cultural activities and facilities and Part III Article 14 – Transfrontier exchanges. This will open up for consideration on ways in which the Charter can be interpreted, reported and monitored in the light of the changes that have transformed the media landscape over the past two or three decades.<sup>54</sup>

### 2.4.1. Introductory remarks

In section 2.2., a discussion of the changes was presented and key factors and notable phenomena were identified. A consequence of the conclusions from 2.2. is that digital developments in the media and in society as a whole must be taken into consideration as required by the general principles set in Article 7. Undertakings especially under Article 11, but also under Articles 12 and 14 should be monitored in terms of functional equivalents with those more traditional solutions that were in place at the time of the drafting of the Charter. This should be executed in terms of *parity*<sup>55</sup> of context, provision and content. These matters will be discussed in more detail below. Furthermore, typical

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54. It has become clear after finalising the present report that the changes also apply to other articles of the Charter, notably to Article 8 on education. One example is the potential and increasing use of web-based distance teaching and learning in and of RMLs. This is one way to overcome the lack of teachers but also to facilitate instruction when RML communities are dispersed. (Editor's note.)

55. The term 'parity of context, provision and content' builds on the ideas developed as part of the LEARNMe workshops on Media. "Irrespective of the numbers of speakers, the provision of media products needs to be similar to that of mainstream media" LEARNMe Abridged Paper p. 20 or LEARNMe White Paper p. 22.

new developments on social media (Facebook, blogs, vlogs, PODs,<sup>56</sup> speech recognition, automatic translation, and applications that support use of social media as well as language use in social media production) would fall under Articles 7, 11, 12, respectively, according to principles of parity, considered in the light of functional equivalence.

Section 2.3. considers aspects of the reporting and monitoring processes under the Charter with a specific focus on the way the ComEx has hitherto dealt with new media in its practice. The technological changes that are transforming the entire media landscape attracted the attention of the ComEx, although it is evident that the ComEx has not yet developed a consistent approach for how to position new media and other technological shifts due to digitisation in its interpretation of the Charter requirements.

As noted in Chapter 2 (2.1., 2.2., and 2.4.), Article 7 in Part II of the Charter is general in scope and calls for the state party to take contextual factors into account in a dynamic manner in the implementation of the Charter.

Furthermore, Moring and Dunbar<sup>57</sup> note that the “types of media that are expressly included in Article 11 (Media), [whilst] confined to radio, television, newspaper and audio-visual production ... spill over to undertakings regarding cultural activities and facilities in more general terms”. The authors conclude that “the undertakings regarding media under the charter cannot be restricted to the types of media outlets expressly mentioned in Article 11, paragraph 1”. Article 12 (Cultural activities and facilities) makes mention of functions that relate directly to the media landscape, and similarly, Article 14 (Transfrontier exchanges) has a particular importance in the field of the distribution of media.

The discussion in this section proceeds systematically, following paragraphs and sub-paragraphs as they appear in the Charter, with cross references where there is overlap or complementarity.

## **2.4.2. Article 7 – Objectives and principles**

Part II of the Charter, which consists only of Article 7, constitutes the basic fall-back mechanism of the ECRML. The intention of the article is clearly stated in the Explanatory Report (paragraph 39) quoted above. Whilst the

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56. Blog developed from web+log, and was shortly used as we + blog, which eventually resulted in blog; vlog = video log or video blog; POD = products originally of Apple's iPod device, later also other types of products than music were introduced, which also lead to the concept of podcasting, that is, broadcasting pods.

57. Moring, T. and Dunbar R. (2008) *The European Charter for Regional or Minority Languages and the media. Regional or Minority Languages*, No. 6. Council of Europe, Strasbourg, p. 10.

principles included in this article “are fairly generally defined and allow the states concerned a broad measure of discretion as regards interpretation and application”, this article sets out a number of objectives and principles that the member states shall take into consideration, irrespective of which languages are covered by Part III, and irrespective of the specific undertakings ratified under Part III. Whilst Part II cannot overrule the undertakings of Part III for the languages covered by that Part, and Part II provisions will be difficult to fulfil at a higher level than Part III undertakings for all languages, these principles provide a guideline for how the intentions of the Charter shall be interpreted.

#### Article 7 - Objectives and principles

1. *In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles:*

*a the recognition of the regional or minority languages as an expression of cultural wealth;*

Sub-paragraph 7.1.a sets the spirit for the mode in which the Charter must be interpreted. As noted by Moring and Dunbar:<sup>58</sup>

The purpose of the charter is to foster a context for the regional or minority languages in which they can be safeguarded and used. This principle cannot be taken lightly; it means that the success of policies undertaken in each state is, in the final analysis, measured against their success in enhancing the language in question.

And further:

Therefore, any ambiguous terminology in the charter should be interpreted in a way that contributes most effectively to the protection and promotion of the regional or minority language in question, and that ensures “as far as reasonably possible” their use in the media. Thus, ambiguities should be resolved in a way that is as favourable as possible to the regional or minority language in question.

This principle requires the state party to consider changes in the cultural and technological environment from the point of view of the main objective that the Charter stands for. In the practical implementation of the undertakings in the Charter the member states should thus take responsibility for responding to eventual functional changes that emerge in society, including in the media,

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58. Moring, T. and Dunbar R. (2008) *The European Charter for Regional or Minority Languages and the media. Regional or Minority Languages*, No. 6. Council of Europe Publishing, Strasbourg, p. 6.

in a manner that corresponds as much as reasonably possible with the needs of the languages. Furthermore, as noted by Moring and Dunbar:<sup>59</sup>

The existence of such discretion also raises the question of the extent to which the Committee of Experts and the Committee of Ministers of the Council of Europe should oversee the exercise of such discretion by the state.

This means that the relevant bodies of the Council of Europe also carry a responsibility in their monitoring of the Charter and consequent recommendations should follow the same principles.

*7.1.b the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question;*

Sub-paragraph 7.1.b is also becoming increasingly relevant in monitoring how media perform their role in society, since many administrative functions that were earlier carried out in offices and in one-to-one communication with the authorities, have now been substituted by mediated practices. Authorities communicate directly with citizens over blogs, Facebook, Twitter and the like. These communications may carry consequences that have earlier (and would still) fall under other articles of the Charter, particularly Article 10.<sup>60</sup> At the same time, they blur the border between media and administrative practice in a way that can reduce the functionality of the undertakings, if the state party applies a narrow interpretation of Articles 7 and 11 of the Charter. The Explanatory Report of the Charter (paragraph 108), foreseeing these types of problems, underlines the special character of the media in that:

the wording of paragraph 1 [referring to 11.1.] in this respect, which differs from the formulation in other articles, takes account of the special nature in particular of the audio-visual media. Thus even if the measures are taken with reference to a particular territory, their effects may extend well beyond it; on the other hand, the measures need not be taken within the territory in question, provided that they benefit those who live there.

This would require states parties to report on how new modes of communication practice take RMLs into account in the different regions and administrative

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59. Ibid., p. 23.

60. According to Henry Jenkins, "We are living in an age when changes in communications, storytelling and information technologies are reshaping almost every aspect of contemporary life – including how we create, consume, learn, and interact with each other. A whole range of new technologies enable consumers to archive, annotate, appropriate, and recirculate media content and in the process, these technologies have altered the ways that consumers interact with core institutions of government, education, and commerce." See Jenkins, H. (2009) *Confronting the Challenges of Participatory Culture: Media Education for the 21st Century*. MIT Press.

divisions, in the light of new mediated forms that may substitute various undertakings of the Charter. Such a requirement to adapt communication policies to the new conditions extends well beyond the range of Article 11 (Media) and also covers issues such as the use of RMLs in administration that traditionally had a very close territorial linkage. The link between linguistic obligations and territorial base of an RML is weakening considerably with the 'de-territorialisation' of administrations and their communication platforms. States should therefore pursue the objective of developing an adequate information and communication policy that also adequately covers the needs of regional or minority languages in their entirety.

*7.1.c the need for resolute action to promote regional or minority languages in order to safeguard them;*

Resolute action will also necessarily require policies aiming at strengthening the position of the different aspects of use of the language in the media sphere. Sub-paragraph 7.1.c. does not specify any particular measures, but it should be taken into consideration that language use increasingly takes place on online platforms through browsing, interactive use of social media, information seeking, and use of mass media online and interpersonal communication. In a number of situations, the resulting expansion of minority language use on online platforms would by default be part of a policy that aims at safeguarding the RMLs, including efforts to develop language techniques that allow these languages to enter into the digital realm with their orthographies, language check availability, automatic translation and speech recognition. As argued by linguists,<sup>61</sup> if resolute action is not taken in this field there is an immediate risk that most languages will be left behind in this development. Thus, states parties should be prepared to report their activities in this regard.<sup>62</sup>

*7.1.d the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;*

Sub-paragraph 7.1.d. provides additional specific guidance to measures that meet the requirements already discussed under 7.1.b. and 7.1.c. The use of RMLs in public life is dependent on how public institutions communicate, and their willingness and ability to communicate in RMLs, including on social

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61. E.g., EPRS European Parliamentary Research Service, Scientific Foresight Unit (STOA) (2017) Language equality in the digital age – Towards a Human Language Project. *IP/G/STOA/FWC/2013-001/Lot4/C2*, March 2017; Kornai, A. (2013) "Digital Language Death" *PLoS ONE* 8 (10): e77056.

62. This may need to be modified and further developed in the forthcoming new principles, since the Explanatory Report says on Art. 7.1.c. and d., that: "The Charter does not lay down precise objectives in this respect but is content to call for an effort of promotion." This should also be compared to Art. 7.1.d. (Editor's note).

media and other online services that are emerging as part of public services and discourse. This sub-paragraph also echoes the approach that is taken in Article 11 regarding how public policies can be carried out in the field of the media through facilitation and encouragement, where state interference is at odds with the principles of freedom of the media. Under current conditions, states parties should be required to extend the reporting of their activities to include also facilitation and encouragement of the use of RMLs in the digital realm, including online social media and mass media. Language use in the digital realm is definitely “use of regional or minority languages, in speech and writing, in public and private life” and states should thus strive to facilitate and encourage such use. The traditional media undertakings under Article 11 are mostly linked to (linear) electronic mass media and legacy (print) media. Whilst these should now be understood in a dynamic sense, including new digital forms, it is all the more important that states also pursue a comprehensive policy of facilitation and encouragement of the use of RMLs in the digital realm in general.

*7.1.e the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;*

The easiness of distribution in the digital realm offers many new possibilities for maintaining links and sharing resources over geographical distances, with low distribution costs. Thus new efforts in line with sub-paragraph 7.1.e. could focus on, for instance strengthening networks, supporting content production, and making RML-related content visible and audible in the public sphere, including in their languages. The Charter secretariat could make states parties more aware of these possibilities, and request information on these activities in the reports. This may also be included in future monitoring reports, by the ComEx.

*7.1.i the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.*

Sub-paragraph 7.1.i., on a general level, addresses similar issues covered also in Articles 11 and 14 of the Charter. Due to digitisation of the distribution of broadcasting and due to the characteristics of digital communication on the internet, the problem of *geo-blocking* has increased as it prohibits the sharing of information over state borders. This is partly a matter of copyright, which the Charter requires to be respected. States can, however, seek to negotiate rights with copyright holders, encourage media to negotiate such solutions, and to offer cross-border content in neighbouring states where the same

language is used free of charge or at an affordable price, and in all ways refrain from unnecessary prevention of the free flow of information. States should be required to report their activities in this field.

*7.2 The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.*

In addition to the obligation to refrain from discriminative or otherwise negative policies that may harm the use of RMLs, sub-paragraph 7.2. binds the states parties to accept positive measures aimed at strengthening the use of RMLs – even to the level of functional equivalence with the main language(s) used in the state – as non-discriminatory. In the current context, where digital media and communication is growing fast, states parties should be required to report on measures they have taken in this regard, in the light of the requirements for resolute action that is tabled in sub-paragraph 7.1.c. above.

In “promoting equality between the users of these languages and the rest of the population” the Charter can be interpreted in terms of ‘parity of context’; i.e. by adopting measures, such as making language resources available that are appropriate to the specific conditions in which the users of these languages live.

The concept of ‘parity’ reflects the principle expressed in paragraph 7.2. of the Charter that favourable conditions should be provided to promote equality between the users. Equality of provision suggests the ‘same’ provision whereas ‘parity’ of provision points to an equitability of provision within the specific context of each language in each signatory state. One example of this might be in states where there is a high take-up of digital services alongside traditional or legacy media; in order to promote equality between the users of these languages and the rest of the population, adequate provision or favourable conditions should be made so that digital services are also made available in RMLs. With regard to the concept of parity or equality between users, levels of access, prominence and visibility of RML media should not be comparatively lower in digital environments, than they were in predigital environments. Due attention should be given to prominence and visibility in areas such as digital EPG<sup>63</sup> and multiple platform distribution (such as accessing television-produced content through gaming consoles etc.).

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63. EPG = Electronic Programme Guide, e.g. for TV, which may also be interactive and contain possibilities of personal storage of choices.

### 2.4.3. Article 11 – Media

This discussion on the undertakings under Article 11 is to be seen as complementary to earlier detailed analyses of the articles and their interpretation practices in the monitoring process.<sup>64</sup> The purpose of this complementary discussion is to focus on possibilities and problems that have emerged due to changes in the media environment since the entry into force of the Charter, as described in section 2.2. above. The authors of this report reiterate that the articles must still stand as they were originally formulated and with the intentions detailed in the Explanatory Report to the Charter. However, many new issues have emerged – also reflected in numerous monitoring reports – that require new approaches to the implementation of Article 11, in order for this article to maintain its value in the new environment.

*11.1. The Parties undertake, for the users of the regional or minority languages within the territories in which those languages are spoken, according to the situation of each language, to the extent that the public authorities, directly or indirectly, are competent, have power or play a role in this field, and respecting the principle of the independence and autonomy of the media:*

It has been clearly stated in the Explanatory Report, that a public service may be performed by a public or private body, in both cases allowing the state to “make provision (for instance, in legislation or in the broadcaster’s specifications) for the broadcasting of programmes in regional or minority languages” (Explanatory Report, paragraph 110). As noted above, in the discussion of Article 7, this possibility is now spilling over to the digital realm where, in many cases, public service has a prominent role as content provider, and in this role has to consider how services in RMLs are offered as part of these services.

*11.1. a to the extent that radio and television carry out a public service mission:*

- i to ensure the creation of at least one radio station and one television channel in the regional or minority languages; or*
- ii to encourage and/or facilitate the creation of at least one radio station and one television channel in the regional or minority languages; or*
- iii to make adequate provision so that broadcasters offer programmes in the regional or minority languages;*

64. Moring, T. and Dunbar R. (2008) *The European Charter for Regional or Minority Languages and the media. Regional or Minority Languages, No. 6.* Council of Europe Publishing, Strasbourg; also Dunbar, R. and Moring T. (2012) “Article 11: Media”. In Alba Nogueira López, Eduardo J. Ruiz Vieytez and Iñigo Urrutia Libarona (eds.) *Shaping Language Rights. Commentary on the European Charter for Regional or Minority Languages in the light of the Committee of Experts’ evaluation. Regional or Minority Languages No. 9,* Council of Europe Publishing, Strasbourg, pp. 373-424.



The interpretation of obligations under sub-paragraph 11.1.a.i. and ii. raises several problems that relate to services carried out in the on-demand realm and on the internet. A major problem of definition is what constitutes a channel or a station in the digital realm. The text of the Charter makes the distinction between 'channel/station' on the one hand, as the more substantive choice, and 'programmes' on the other, as a reduced option. In an age where this distinction may be less prominent, due to the fact that programme services can be moved to on-demand platforms where they are chosen at will by consumers, the authors' view is that the concept's station and channel would imply:

- a) Regularity of production and distribution of new and original material: the daily production of new material to the amount that would cover what is usually considered as prime time (at least three hours),
- b) A range of output and forms of distribution: including news and current affairs, and programmes in different genres including children's programmes.
- c) Visibility, branding, identity and marketing: making it easy for established and prospective audiences to find the output in their language.

With regard to a), a problematic question is how to consider repeats and inclusion of dubbed or subtitled programmes in languages other than the RML. Here, monitoring would have to be sensitive to the relevance of the programme mix, as considered by the users of the language, in the interpretation of what can be considered 'new' in this regard. As the ComEx has stated, broadcasting of reruns should not be considered as improvements made in this regard (Hungary, 5th cycle, 2012, paragraphs 281, 411, 663, 787, 911 and 1040).

With regard to b) and the forms of distribution, it is important to consider textual or multimedia services that are carried out by public service broadcasters in addition to their broadcasting activities. These services are in many instances very similar to services provided traditionally by media in newspaper production. In some cases the public service media take on roles that substitute printed media that have withdrawn from covering areas, issues or genres that they find unsustainable in the new business environment. In the light of this development, a broadcaster that performs a public service and has taken up these types of activities for the main audience should offer similar services in the RML concerned. Monitoring would have to pick up also on these developments in order to fulfil the purpose of the Charter (in accordance with recital 5 of the preamble), to compensate structural deficiencies and inequalities, which regional or minority languages are exposed to.

Again, in the context of b) and also with regard to c), a third question appears, namely whether a broadcaster can move all RML programmes to the internet

and still claim that this is broadcasting. In the light of the prevailing differences in audience habits and digital divides based on age, education, skill and visibility of different platforms in the public sphere, a reasonable interpretation is that traditional broadcasting must remain available for RMLs as long as it is maintained for the wider audience, while at the same time building up new services that meet the needs of younger and more digitally oriented groups of users including in RMLs.

Sub-paragraph 11.1.a.iii. also raises questions similar to those just discussed. The question whether audiovisual materials, available online and on demand, should be considered sufficient, particularly requires an answer today. The authors of this report recommend looking at such material from the view of how often it is updated and how much new production is made available in the RML concerned. A minimum requirement is that this new and updated content provision would fill the criteria for broadcasting on existing legacy radio and television services. In this case, the requirement also remains to make the programmes audible and visible on traditional broadcasting platforms.

*11.1.b.i to encourage and/or facilitate the creation of at least one radio station in the regional or minority languages; or*

*11.1.b.ii to encourage and/or facilitate the broadcasting of radio programmes in the regional or minority languages on a regular basis;*

*11.1.c.i to encourage and/or facilitate the creation of at least one television channel in the regional or minority languages; or*

*11.1.c.ii to encourage and/or facilitate the broadcasting of television programmes in the regional or minority languages on a regular basis;*

For sub-paragraphs 11.1.b.i. to 11.1.c.i., the principles above would also apply. Furthermore, in the sector of private/commercial media, it becomes more and more problematic to distinguish ‘stations’ and ‘channels’ from ‘programmes’. Online provision of television programmes, often on demand, creates quite a different offer than the one of traditional, ‘linear’ television and radio programmes on classical commercial platforms. This may be less difficult with certain forms of internet radio that still follow the traditional formats of radio ‘programmes’, although in these cases it might also be difficult to say whether the offer of a purely internet-based radio channel suffices to fulfil the undertaking of Article 11.1.b.i. in a specific social context. This will depend on the overall media context and the general patterns of media consumption in a given society. In general it can be said that the more the commercial types of radio and television migrate to online platforms beyond traditional ‘linear’ formats distributed via satellite, cable and terrestrial signal, the more need there is for the state to encourage and facilitate the provision of new commercial ‘online formats’ in RMLs. For quite some time to come, the member states

of the Charter will have to pursue a ‘two-track’ policy supporting traditional, ‘linear’ commercial media (for the older generations), as well as new formats in the digital realm (for the younger generations).

*11.1.d to encourage and/or facilitate the production and distribution of audio and audiovisual works in the regional or minority languages;*

Sub-paragraph 11.1.d. does not specify the forms of distribution of audio and audiovisual works. The digital and online media environment is nowadays a production and distribution context of primary importance. Whilst it is important to monitor this sub-paragraph in its own right, the obligations for the state party are to follow up on digital developments in the media field, irrespective of how this sub-paragraph stands. Thus, developments in the digital media realm must be considered irrespective of whether this sub-paragraph is included in the ratification or not (see also 2.4.2.). With the new formats of audio and audiovisual media in the digital realm, the distribution costs will be reduced; the existing bottleneck of a shortage of productions of such material in RMLs will remain the same, however, leading to an urgent need to support the production of audio and audiovisual works in these languages, if the availability of minority language programmes in the digital realm shall not be completely eroded.

*11.1.e.i to encourage and/or facilitate the creation and/or maintenance of at least one newspaper in the regional or minority languages; or*

In conformity with the ComEx’s regular interpretation, a “newspaper” in the sense of this undertaking has to be published at least weekly (Armenia 3rd cycle, 2013, paragraph 124, 233 and 327; Bosnia 2nd cycle, 2016, paragraph 220; Croatia, 5th cycle, 2014, paragraph 354. As noted in Chapter 2, the newspapers are rapidly moving to the web in many countries, sometimes substituting part or even all of their print services with online services. This raises the question whether sub-paragraph 11.1.e.i. can be fulfilled by a newspaper that appears only in digital form. One of the difficulties encountered in answering this question is the difficulty to compare continuous publication of new material in digital form with the production of print media per time unit, for example weekly or some days a week. In the current media environment, the contextual factors must be considered when monitoring the services in RMLs in this regard. These services should be on a par with the services provided in the main language(s), and sensitive to the digital divides of the RML users. Thus, in a context where the use of newspapers or newspaper content in digital form is widespread, RMLs may be sufficiently served by similar technical solutions. And, reversely, where digital services are offered by newspapers in the main language(s), monitoring should be sensitive to whether similar services are also developed in the RML concerned.

*11.1.e.ii to encourage and/or facilitate the publication of newspaper articles in the regional or minority languages on a regular basis;*

The arguments relating to sub-paragraph 11.1.e.i. also apply here. In addition, it is important to note that newspaper articles in RMLs have been traditionally published in newspapers that are generally in (one of) the dominant, official languages of the state, even if there are newspapers and magazines produced in the RMLs. The impact of this is twofold: firstly, it often allows articles in RMLs to reach a wider audience, and secondly it gives the RMLs visibility beyond their own speaker communities. The former is an important aspect of adherence to the values of the Charter, and the latter is good practice.

*11.1.f.i to cover the additional costs of those media which use regional or minority languages, wherever the law provides for financial assistance in general for the media; or*

*11.1.f.ii to apply existing measures for financial assistance also to audiovisual productions in the regional or minority languages;*

See discussion under sub-paragraph 11.1.d. In the current media environment, resolute action (see sub-paragraph 7.1.c.) becomes crucial in the development of digital services and digital content in RMLs. Support in the form of financial assistance is crucial for the viability of RML content in the digital realm, in particular bearing in mind the overall shortage of audio and audiovisual productions in RMLs in general. Thus sub-paragraphs 11.1.f.i. and ii. should be monitored with this in mind.

*11.1.g to support the training of journalists and other staff for media using regional or minority languages.*

The dramatic shifts in the media landscape also affect the profession of journalists (and of producers of radio and television programmes). The number of professional journalists with dedicated professional training, able to make a living by working as a journalist, will go down significantly since the new formats in ‘newspaper’ journalism as well as radio and television will work with a much reduced staff. As a complementary development, the number of part-time journalists contributing on a ‘free-lance’ basis to these media formats will grow. There is thus a need to develop and support new schemes for the training of such ‘half-professional’ or ‘irregular’ journalists in RMLs – and which will not be covered by the markets themselves, but need dedicated support from the state.

*11.2 The Parties undertake to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language. They further undertake to ensure that no restrictions will*

*be placed on the freedom of expression and free circulation of information in the written press in a language used in identical or similar form to a regional or minority language. The exercise of the above-mentioned freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

See discussion under Article 7.1.i. above. Due to digitisation of the distribution of broadcasting and due to the characteristics of digital communication on the internet, *geo-blocking* has become an increasing problem in the last years: a number of minority communities have complained that *geo-blocking* prevented them from getting access to the television productions from neighbouring countries with the same language. This is partly a matter of copyright and partly an issue of the commercial policy of television providers. States can (and should) make efforts to negotiate rights with copyright holders, encourage media to negotiate such solutions, and offer cross-border content in neighbouring states, where the same language is used free of charge or at an affordable price.

#### **2.4.4. Article 12 – Cultural activities and facilities**

In Part III of the Charter, it is not only Article 11 on media that covers important issue areas linked with the use of new media. Article 12 on cultural activities and facilities must also be taken into consideration, since the new media erode the traditional boundaries between (electronic) mass media and the printed press on the one hand and cultural productions (in print or audio and audiovisual format) on the other hand. Support for large parts of the productions accessible via the internet or social media was traditionally covered by the undertakings of Article 12 of the Charter. Focus must be put on the provision if an adequate picture of the role of new media in the context of the protection and promotion of RMLs is to be achieved.

*12.1 With regard to cultural activities and facilities – especially libraries, video libraries, cultural centres, museums, archives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries, including, inter alia the use of new technologies – the Parties undertake, within the territory in which such languages are used and to the extent that the public authorities are competent, have power or play a role in this field:*

This section contains explicit references to activities closely associated with the media, such as ‘video libraries’, ‘cinema’, ‘film production’ and ‘new technologies’. It can be argued that in many RML contexts, media organisations have played a significant role in the delivery of video, cinema and film, especially in the cases of professional productions. Television, in particular, has been a key player in the production of film for theatrical release (i.e. in cinemas) in RMLs that are not transfrontier.

The role of new technologies in the media environment is extremely important for reasons already discussed in Chapter 2. One of the phenomena identified in Chapter 2 is that of *media convergence*. This can be interpreted to mean that distinctions between media form (notably audiovisual broadcasting, radio broadcasting, and printed written press) become more fluid or converged, as indeed do the specific roles of media producers (broadcasters, press organisations and users, or audiences and readers).<sup>65</sup> In the same way, media convergence also affects many of the cultural activities and facilities listed in Article 12 and is particularly relevant in the use of archives and literary works.

*12.a to encourage types of expression and initiative specific to regional or minority languages and foster the different means of access to works produced in these languages;*

Access to works produced in RMLs can be interpreted to mean linguistic access (i.e. possibly through translation and associated technologies of translation),<sup>66</sup> as well as access through appropriate distribution, visibility and targeting. To “encourage types of expression” specific to regional or minority languages clearly covers any form of support for cultural productions in such languages. This may be traditional forms of on the spot cultural expression at festivals, theatres or concerts, but definitely covers also a broad range of cultural productions adapted to modern digital forms of recording such as literary work and film production, videos, music recordings, online chat rooms, pods, blogs, vlogs, etc., regardless of their form of distribution as a CD, DVD or on YouTube or other social media platforms. Article 12.1.a. requires the state to “encourage” such types of cultural expression, which at the core addresses the need for financial and infrastructural support, required by all these types of cultural expressions in order to flourish.

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65. Media convergence may in some contexts be counteracted, as suggested in the Swedish inquiry proposal on public service; due to pressure from the commercial broadcasters and some political parties, the role of public radio and TV should be focused on the traditional tasks of these media outlets (SOU 2018:50). (Editor’s note.)

66. This interpretation needs further discussion about to what extent various types of adaptations into an RML from another language, via new technologies may be seen as production in that language. This reasoning also applies to Art. 12.1.b. and c. (Editor’s note.)

*12.b to foster the different means of access in other languages to works produced in regional or minority languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;*

*c to foster access in regional or minority languages to works produced in other languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;*

This section requires consideration on language technologies, including translation and speech recognition; while some RMLs are included in such projects (including the co-official languages of the EU such as Basque, Catalan etc.), others are not. Sub-paragraphs 12.1 a., b. and c. make specific reference to 'access to' a. and b. works produced in RMLs and 'access in' c. such languages to works produced in other languages. In the context of contemporary translation, this needs to include online translation, automated translation as well as translations produced by humans (alone). It also means, as far as distribution (as one aspect of fostering access) is concerned, to support digital channels giving access to the types of works mentioned in Article 12.1.a., b. and c.

*12.1.d to ensure that the bodies responsible for organising or supporting cultural activities of various kinds make appropriate allowance for incorporating the knowledge and use of regional or minority languages and cultures in the undertakings which they initiate or for which they provide backing;*

*e to promote measures to ensure that the bodies responsible for organising or supporting cultural activities have at their disposal staff who have a full command of the regional or minority language concerned, as well as of the language(s) of the rest of the population;*

*f to encourage direct participation by representatives of the users of a given regional or minority language in providing facilities and planning cultural activities;*

Direct participation in the modern world happens online as well as in other more traditional ways. In order for cultural activities to be meaningful, especially to a younger audience and digital natives, bodies responsible for such activities need to be mindful of communication strategies that allow for direct participation in the RMLs, through new technologies and social media.

*12.1.g to encourage and/or facilitate the creation of a body or bodies responsible for collecting, keeping a copy of and presenting or publishing works produced in the regional or minority languages;*

Archives are increasingly online collections. This produces a number of problems, since the traditional concept of an 'archive' in most states (and most situations) tends to be limited to collections of books, photographs, documents and other printed material. There has been a tendency to enlarge the range of 'archival' collections to cover recorded works of music and other audio and audiovisual material recorded on tapes, CDs and comparable format. Archives

further need to develop in the direction of collecting online material – a task that poses significant challenges to traditional types of archives, but also to ‘go online’, in order to provide its services to the large public and researchers.

- 12.1.h if necessary, to create and/or promote and finance translation and terminological research services, particularly with a view to maintaining and developing appropriate administrative, commercial, economic, social, technical or legal terminology in each regional or minority language.

The media play an important role in the dissemination of terminology in any language and in particular in RMLs. As argued by Jones, the media play a more significant role in the dissemination and sometimes creation of new terminology in RMLs than in the official language of the state, due to the fact that RMLs are not always languages of commerce or diplomacy; through factual and fiction production, they can present a mediatisation or imagined experiences of such situations: “Television programmes alongside print and electronic media often perform the role of a hothouse for coining new vocabulary .... The language policies and linguistic practices of a television channel can have far reaching effect within a language community.”<sup>67</sup>

*12.2 In respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage and/or provide appropriate cultural activities and facilities in accordance with the preceding paragraph.*

*3 The Parties undertake to make appropriate provision, in pursuing their cultural policy abroad, for regional or minority languages and the cultures they reflect.*

In the context of global and online media, it is important for RMLs to be able to connect with audiences living in other countries (diasporic, transborder, mobile etc.) and for these audiences to be able to use their languages in order to participate actively in their cultures. The development of new media makes it easier to serve the mentioned diasporic communities living far away from the traditional settlement areas, although this also creates challenges in the construction of such cultural facilities and services that must be taken into account when setting up such services.

## **2.4.5. Article 14 – Transfrontier exchanges**

In a globalised world, social interactions (and communication) tend to happen less and less in national ‘containers’ neatly separated from each other.

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67. Jones, E. H. G. (2007) The Territory of Television: S4C and the Representation of the “Whole of Wales, in Cormack M. and Hourigan N., *Minority Language Media – Concepts, Critiques and Case Studies*. Clevedon: Multilingual Matters, 188-211; see p. 194.



In particular, there is a growing ‘transfrontier’ character of interactions in the field of the new media happening through (and supported by) online platforms. As a result, the specific support of transfrontier exchanges gains a growing importance.

The Parties undertake:

*14.a to apply existing bilateral and multilateral agreements which bind them with the States in which the same language is used in identical or similar form, or if necessary to seek to conclude such agreements, in such a way as to foster contacts between the users of the same language in the States concerned in the fields of culture, education, information, vocational training and permanent education;*

In the field of media education, this undertaking covers tasks such as the fostering of transnational forms of vocational training for the media, journalism, film and television production. Furthermore, it also covers key skills for bilingual and multilingual social media and public relations in the cultural industries closely related to the media.

*14.b for the benefit of regional or minority languages, to facilitate and/ or promote co-operation across borders, in particular between regional or local authorities in whose territory the same language is used in identical or similar form.*

The undertaking contains references to *geo-blocking* and other forms of separating public and administrative spaces along national boundaries (see also 11.2. above). Such traditional forms of communication and co-operation to closed national spaces need to be broken up, in order to prevent hindrance with respect to the reception and use of media in neighbouring states where the same language is used. This also concerns various kinds of cultural expression distributed online, and even of mere administrative information accessible in the new media.

## 2.5. Orientations for monitoring

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**T**he preceding sections have given some background to the development of the new media, the hesitant or inconsistent adaptation in the monitoring process to these changes, and an introduction to the articles and undertakings concerned by this development. In this section, an attempt will be given to formulate and predict the ways in which the monitoring of the said provisions of the Charter and its general adaptation to the new situation could be enhanced.

### Conclusions

Given the dramatic changes in the field of media and new technology, it is clear that there is an urgent need to revisit the basis for the monitoring of several articles of the Charter and to have a consistent and comprehensive approach to the reporting. This concerns an updated interpretation of the meaning of Articles 7, 11, 12 and 14, in the current context. Despite this, the former evaluation of these articles still stands, but there is a need to add aspects to the monitoring to reflect the changed conditions. This would require a clearly context-dependent adaption of the Charter to different situations. The text of the Charter in a dynamic interpretation is adequate to cope with the challenges arising from the changed media landscape. In many reports, these dimensions have already been touched upon by the ComEx, but this has not been clarified as a strategic interpretation of the Charter by it, and therefore these comments have remained somewhat haphazard.

Two main principles that need to be taken into account are *functional equivalence* and *parity of services*. The first principle refers to the ways in which citizens use and consume media services. The second principle refers to the ways in which states ensure that their citizens are served appropriately, providing services or creating conditions so that equality between users of these languages and the rest of the population can be promoted, taking into consideration the specificity of the context of each language and each state party (see Section 2.4.2. above). The adaptation of these ways may, depending

on the context, require quite different measures to be taken by the states. Accordingly, the role of the state in safeguarding an adequate level of services may differ significantly. Although media services in some contexts can be provided efficiently through the commercial sector and voluntary efforts, there is a continued role for the state in ensuring that citizens can be served in RMLs in the new media environment.

The process of making consistent changes in the evaluation of the situation in the different states parties also requires that there is procedure in place that makes them aware of the updated interpretations and evaluation. Therefore the states and the speakers need to be informed by the Secretariat in collaboration with the ComEx, in a structured way.

Similar changes are expected in other fields of the Charter,<sup>68</sup> but would also concern other instruments of the Council of Europe.

Attempts to formulate recommendations for the future monitoring evaluations are given below, extending them from the present principles of dealing with Articles 7, 11, 12 and 14, to systematically include new insights based on recent developments within the changing new media field.

## **Recommendations for how to address the provisions on media and new technology in the Charter**

Compliance with the Charter requires a dynamic approach, which is allowed and built into the Charter. Both states and the evaluation procedures therefore need to adapt to the changing conditions, for example in the media field. As a consequence of the changes of media behaviour and technological development described in the report, the working group proposes the following:

- ▶ Guidelines covering the changes need to be provided by the Secretariat and the ComEx to states and to representatives of the speakers;
- ▶ Changes in the media environment require the states to make available relevant and more extensive data, in order for the ComEx to be able to evaluate the compliance to the provisions of the Charter;
- ▶ The continued dynamics in the media field should be followed and considered in the implementation of the Charter.

The recommendations below attempt to identify main points discussed under each article, leading to measures that need to be taken.

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68. As mentioned elsewhere in the report, this would also concern Articles 8, 9, 10 and 13, as a consequence of the digitisation of communication between authorities and citizens, as well as in various types of services. (Editor's note.)

## Article 7

Part III undertakings should be interpreted in the light of the overarching objectives formulated in Article 7.1.c (the need for resolute action to promote RMLs in order to safeguard them).

According to the objectives laid down in Article 7, states should pursue an adaptation of facilitation and encouragement of the use of RMLs in a manner that takes the digital shift into consideration.

## Article 11

Where media services are migrated to digital platforms, fully or partially, the relevant undertakings of Article 11 cannot be fulfilled if this is done to the detriment of regularity of production, reach and range of distribution, accessibility and visibility of content in RMLs.

States should be attentive to the importance of language technologies including digital translations and digital language tools in RMLs, which underpin resources for media production and social media communication in RMLs (also applicable to Article 12).

With the spread of new formats of audiovisual media in the digital realm, there is a growing need to support the production of audio and audiovisual works in RMLs (also applicable to Article 12).

Training of journalists, staff of media, including freelancers and other producers of media content in RMLs, should develop relevant skills to provide for adequate competences in the digital realm.

In the reporting and monitoring processes there should be clarity on the distinction between statutory regulated ‘broadcasting’ and ‘online distribution’ of audio and audiovisual material and its derivatives in other formats.

## Article 12

States should be made be aware of obstacles in social media contexts, in which RMLs are not supported by the main channels of distribution, and should address this issue in ways that are relevant for this article (also applicable to Article 11).

See also the recommendations under Article 11, which are relevant to Article 12.

## Article 14

States should be made be aware of their duty to secure transfrontier availability to services in the digital realm, by addressing *geo-blocking* and other obstacles that prevent access to media content in RMLs by, for instance by negotiating with copyright holders (also applicable to 11.2.).

## Chapter 3

### 3.1. Introduction and outline of Chapter 3

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**F**or the ComEx, the challenges in the monitoring process have been and still are, how to be consistent and adaptive in, and how to develop functioning strategies for the monitoring over time. Over time in this respect refers both to the Charter as such, which at a textual level means that all articles and paragraphs are discussed as regards their stable as possible interpretation including according to international law, despite changing external conditions and reference to these. But, over time also refers to developments in individual states, their ratifications for each language and the relation of those developments to the evolving changes in society. The changes with regard to the media field and digitisation have been fundamental. Monitoring practices adapted to such fluctuations related to the stability of the Charter have consequently also evolved over time in their treatment by ComEx: any analysis and change of the monitoring principles, over time, needs to be based on both dimensions.

The Charter was drafted to be dynamic and flexible in order to be able to cope with a changing world surrounding the RMLs as far as possible. Such changes, for example in society as a whole and in communication habits specifically, are evolving gradually, and the monitoring process needs to find potential breaking points in order to make reasonable shifts in the interpretation of the Charter. Within the media field, at least two such breaking points identified by the ComEx took place around 2005-2006 and 2015-2016. A general challenge, however, in evaluating the impact of such breaking points is that they do not take place at the same pace in all states parties of the Charter, or at the same pace for all RMLs within the same state, or among all speakers of the respective languages. The individual menu choices for the RMLs in the ratification instruments add complexity to the monitoring process. The ruse is then to try to adapt the monitoring to, on the one hand, the dynamics and

flexible conditions within the states, and on the other hand, still keep track of a consistent adaptation of the interpretation of the Charter's requirements. While the text of the Charter as such is not to be changed, the interpretations therefore need to be innovatively adapted to changing conditions, under the remit of the Charter, which means that they cannot remain too static. Some such suggestions have been presented in 2.2., 2.4. and 2.5., which will form a core content for developing new strategies for the monitoring by the ComEx.

## 3.2. Some comments on the experts' analyses

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**A** basic precondition for monitoring, outlined in Chapter 2, is the understanding of how the fields of media and digitisation develop. Central in this is that the old ways of dealing with the undertakings, focusing on traditional, 'linear' broadcasting and print media, are still valid. At the same time, the new conditions need to be taken on board in the process of monitoring, but this cannot be the sole focus. Furthermore, as has been stated in 2.2.9. above, there is no 'one-size-fits-all' principle to adopt for the promotion of new media, since the conditions vary extensively between and within the different states. The view of ComEx about internet and online provisions for RML media is that they are now developing into a necessary, but not sufficient requirement to fulfil an undertaking. For the time being, it is complicated to qualify in detail what such recommendations should involve, since the undertakings do not deal with these processes. Some indications of what directions these could take are given in 2.2.10. These still need to be further debated in the ComEx.

### 3.3. Problems of the dynamic and flexible outline of the Charter, versus a static understanding of its functions

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In an evaluation of the ways of how the ComEx has dealt with these issues, the first topic is which reports should be discussed and used as the basis for the conclusions in the analysis. In section 2.3.1. it is reported that in 45 of the total of 97 reports, there is some mention of the internet as a distribution channel for RMLs, which is seen as a positive outcome. The percentage for this is 48%. The analysis covers all states and all reports adopted between 2000 and 2016. The earliest possible entry into force of a ratification was 1998 (five states). The impact of *Web 2.0*, which is directly connected to the internet as a distribution channel, was introduced in 2004 and took off around 2005-2006. Its importance has been progressively increasing, so no clear-cut breaking point for this may be established. This means, that if all the countries that entered the Charter before 2007, and including all reports of these countries published before 2007 were excluded from the analysis, 40 reports should be reduced from the total number of 97.<sup>69</sup> That means that if the mention of the use of online or digital products is present in 45 out of the remaining 57 reports, this is not a poor outcome (79 %), considering that the impact has been growing only from 2006-2007.

Many of the issues discussed refer to *Web 2.0* and its effects on other internet and technological advances. One conclusion would be that only those reports that were filed after 2006 are included in an analysis of the growing importance of online productions and web-based support for RMLs, in order not to bias the conclusions. If only the reports after 2006 are included, some developmental facts should be reflected: not all effects of the novel

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69. See [www.coe.int/minlang](http://www.coe.int/minlang) on the ratifications of the states. Luxemburg would not be included at all, due to the lack of RMLs in the sense of the Charter, in the country.



possibilities of the internet were well developed by then and therefore could not be monitored consistently. YouTube, for example, was activated in 2005, Twitter was created in 2006, and Instagram launched in 2010. Other ways of analysing ComEx's monitoring, which was pointed out in Chapter 1, would largely be anachronistic. It is thus more useful to analyse to what extent such comments on new media are present in recent reports, and possibly, if and how the ComEx's conclusions have changed since about 2008.

The initiation by the ComEx of the media report by Moring and Dunbar in 2008 indicates that it was fairly alert to the changes appearing at that time. Nevertheless, and as confirmed by some of the conclusions in the analyses of Chapter 2, an established new and coherent way of dealing with the new media and digitisation was not produced at that point in time. This lack of a strategic consistency is also pointed out in section 2.3. Such a consistent way of evaluating the digital development is vaguely indicated in the growing awareness in the comments referred to, which the ComEx has provided in its monitoring from about 2006.

One issue reflected in 2.3. and 2.4. is how to take a stand on whether provisions of digital media only would suffice for fulfilled conclusions of the undertakings, and following this, that the ComEx would require the authorities to make this possible by one-sidedly promoting the new media for RMLs. As is pointed out in 2.2.10. and 2.4.3., how to evaluate this is not an easily solved challenge and needs further discussions in the ComEx.

Another issue is how to proceed with whether online media provisions are "audio or audiovisual works" or whether they may be radio, television broadcasts or newspapers fulfilments, in order to clarify where such online products belong. One dimension of this is that the audio and audiovisual works and productions have gone through later phases turning into polymedial and multimodal types of products, sometimes in the media field, sometimes more in the form of separate products, which furthermore may have been digital, but not necessarily online. The development and the classification of these have naturally changed over time. Again, a decision on whether they are only one or the other is to be further discussed within the ComEx. In addition, at present "audiovisual works" as a concept may have become more or less obsolete. There could still have been a more consistent interpretation by the ComEx of where each type of audiovisual works belongs. This, however, is also an issue about what type of information is provided in the state reports, and whether this has been done consistently or randomly.

## 3.4. The reach of the Charter and the power of states parties

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**S**ome of the suggested changes imply that the situation between old media and new media for the dominant, official language of the state would be required to be taken into account to another degree than before. This would be necessary for the understanding of the situation for new media and digitisation in general in a society, and how this can be related to the situation of the RMLs with regard to the level of digitisation and use of new media for these languages. The idea of ‘parity of context/services’ (section 2.4.1.) needs to be carefully evaluated. In many cases the size of the community is decisive, for example when a state has ratified an undertaking providing for the creation of a television channel for a specific language. As a suggested leading principle the idea of ‘parity of context’ is valuable for the protection of RML media, but it still needs to be discussed in relation to the Charter provisions, ratifications and their functionality. This would influence what can be asked for from the states, with regard to what and how they should promote the RMLs in this field. The information concerning majority languages, potentially necessary to ask about from the authorities, is at present not formally a part of the setup of the Charter.

Close to this is the issue of how to deal with user-generated media. Since one finding in the report is that the demographics partly reflect divides in this respect, it is challenging to try to define what can be expected from the states in this regard. How can it be formulated that the state should steer the users and for example influence or promote the use of social media? This is also a matter that needs to be interpreted further and discussed by the ComEx. The suggestion to understand Article 7 as an obligation to establish functional equivalence is one opening in this direction and facilitates suggestions for more dynamic interpretations and recommendations, with regard to the disappearance of traditional media, covered mainly by Article 11.

One important aspect therefore to be taken into account following the suggestions in the recommendations in 2.2.10. and 2.4.2., is the role of Article 7. The consequences of showing its relevance for the changes in the media field are twofold. On the one hand, main points in recommending the use of Article 7 for securing state promotion of RMLs within new media, which is of germane importance, need to be developed and agreed upon by the ComEx in further discussions. On the other hand, this direction cannot lead to the consequence that Article 7 overrules the undertakings for individual languages in Article 11, even if it can be used as a proactive possibility when there is no undertaking covered in Article 11, for a specific language. This also needs to be checked against which undertakings for which languages have been ratified. The interpretation of Article 7 in the current dynamic context following from the profound changes in the media sector demands that the Comex evaluate its potential in greater detail.

As is stated in 2.1., 2.2. and 2.4., there is a need to uphold the monitoring of the traditional media as long as there is a request for that among the speakers, which considering the different demographics, will be the case for some time to come for most states parties. Typically, this would concern the issue of promotion of newspapers in RMLs. This should be continued in parallel with the introduction of promoting new media for RMLs, since one would need to avoid the marginalisation of RMLs in the new technical environment. If there is a full consensus among the different demographics of the speakers of a specific RML, that the provisions of media are sufficient even if they are only in digital form, this could be the basis for a recommendation to a state party. Since the conditions differ between states and between speaker groups of the individual languages, this cannot be implemented in general, as yet. Therefore, there cannot be a simple answer to whether provisions of only traditional media, or alternatively, new media, are sufficient for the fulfilment of undertakings. If the situation and the speakers so require, provisions in the form of traditional media may suffice, and in other cases, only digital provisions may be enough. At any rate, it is difficult to identify any state party under the Charter, which has fully given up traditional media, in both public and private spheres. Therefore, the old way of monitoring cannot be fully replaced, but it needs to be complemented by new data on the use of new media for RMLs. This is also a point supported by the analyses in Chapter 2. As a general point, the request for information should thus not only target the states parties, but also need to involve the views of the speakers of the RMLs, with regard to media. This would be crucial for the understanding of the preferences of different demographics and for their evaluation.

A separate but complex issue, related to the ratifications of states parties, is how accurate and realistic a ratification is to implement at all in relation to the situation of the specific RMLs. In some instruments, the ratification undertakings have been chosen at too high a level, in others, at too low a level. In both cases, the monitoring is bound to follow the instrument of ratification.

Another issue is that of so-called *geo-blocking*, which is increasingly often preventing free access to internet-based sources and services over national borders. As mentioned in 2.2. and 2.5., this may be attempted to be solved in co-operation between states parties and also involving producers and copyright holders, to create bilateral (in some cases international, multilateral) agreements. It continues to be a challenging task for the ComEx, to present recommendations to the states on this issue. This aspect also needs to be elaborated upon by the ComEx.

## 3.5. Other issues raised

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### 3.5.1. Demographies

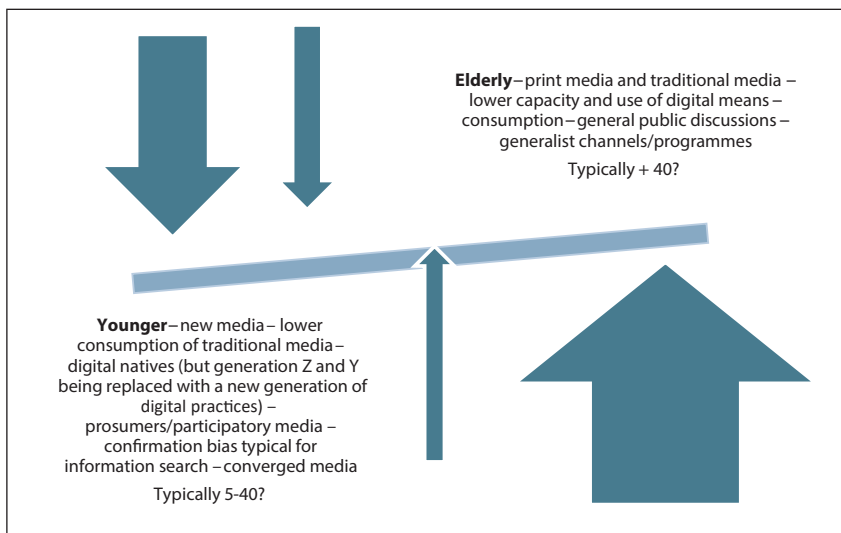
One issue raised by several members of the ComEx is the use of the concept of 'demographies' in the report, which needs to be clarified, in order for a reader to understand more precisely how the variation in the adaptation to new technology evolves over time, and what this requires in the monitoring and the responsibility of the states and the ComEx. These comments may not have a direct relevance for the report and the conclusions as such, but it is useful for the further work and monitoring of the Charter to deal with this here.

In the report, the term 'demographies' is rather vaguely used as referring to older/elderly, vs. younger speakers (under 30 years) of the RMLs (to some extent this also concerns majority populations). Since age is seen as rather roughly correlating with the preference and consumption/prosumption of media, an attempt is made to narrow down the content of the concept below.<sup>70</sup>

In principle, the idea of age correlating with various other social characteristics of importance for media habits and social communication as well as the use of digital means is relevant. Therefore a hypothetical, visual representation of such correlations is given below, which complements the descriptions of the analyses in Chapter 2. The correlations may be seen as demographical pyramids in opposition with each other (Figure 1), but with some partial overlap between ages and media preferences:

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70. Adding complexity to this is that the age factor also may overlap with educational characteristics (SOU 2018:50).



*Figure 1.* Prototypical division of media use and consumption in societies in which the demographics have become divided with regard to media use and digitisation.

Explanation: left-hand arrow for both elderly and younger refer to traditional media.

This may reflect a real divide in the capacity and willingness to use new vs. old media.<sup>71</sup> One can expect some movement from the elderly group towards the use of new media, but less so for the younger group with regard to moving towards the use of traditional media. Instead the use of new media and technology may be expected to spread and deepen among the younger, at the cost altogether of traditional media. The breaking point, which here is set in the age range of 35-45, can be expected to rise. However, such demographics vary in different countries and for different RMLs in the same country.

This also requires sensitivity for what can be required in the monitoring of the states parties' duties. Collecting information based on the idea of different demographics faces challenges both for the states parties and the ComEx, since such information may be difficult to define and find. It also involves information provided by NGOs. This again has to be related to the ratification for each individual language. Furthermore, the information requested by the

71. A challenge to this is of course that this may differ from general statistical expectations on behaviour, which may follow other types of cohort divisions.

ComEx on media hitherto, is seldom fully matched by the provided information; there is room for improvement in this respect. Detailed discussions on what information should be requested need to be fed into the formulations of such requests by the ComEx (see further, 2.2., 2.4. and 2.5.).

### **3.5.2. Further effects of digitisation**

Several other aspects and changes result from two parallel developments, caused at least partially by digitisation. They are more general in scope than what is presupposed by the treatment of the articles of the Charter chosen here. Firstly, the borders between the written text and the spoken word are becoming increasingly blurred. Social media, chats, blogs, etc. change the idea we have about language; new ways of communicating and the styles adjusted to them promote mixing and switching of languages (often called translanguaging today). Secondly, different modalities (sight, hearing) are combined in new ways and in parallel. This is also reflected in the use of social media, polymedia or other multimodal possibilities. Both trends extend to discussions on educational provisions for multilingual children.

The effects of globalisation increase access to different languages as resources, especially of English, as does the users' capacity grow to do so. In language shift situations, threatening most RMLs today, the dominant societal language (the 'majority' language), influences the use and competence of the RMLs, but typically also English interferes and makes itself available and necessary, in new ways. This means that both attitudes to and use of RMLs, as does the teaching of them, face new challenges, since monolingual use (the existence of which is a highly questioned practice), is vanishing, and becoming socially obsolete. These fundamental changes, the cause of which is largely found in the adoption of new technology, have not been approached in the monitoring of the Charter, but may need to be part of the discussions further on. Media is again, a forerunner in this process.

A reversal of some language activities takes place in parallel with all this, namely that RMLs speakers may write more frequently today in their languages than ever before. This is to a high extent connected to the increasing use of mobile phones/smart phones. This needs further consideration, since the spread of new technology may also enhance the writing of RMLs, but this may not be matched by educational or other provisions in the RMLs.

Within education, Article 8, further challenges are to be found. How and when does distant and web-based education fulfil the provisions of teaching in and of a language? Again, the use of new technologies for this varies substantially between states and for different languages within a state as do the views on

the possible advantages of this. The use and ensuing monitoring of such new means may even need to differ between territorial and non-territorial languages. This is a further aspect that the ComEx may need to address.

The change of communication and information between authorities and citizens, the increasingly digitised provisions of public services, including social and economic life, predict the need to deal with Articles 9, 10 and even 13, in similar ways as outlined in this report for the media field and connected articles. Thus, the reporting and evaluation of these articles also need to be updated in the light of the growing digitisation impact. Potentially, some of the recommendations presented above under 2.5. may also be adaptable to these articles.



## 3.6. Final words and epilogue to the report

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**S**ome of the recurrent challenges in the media field may be resolved by the recommended new orientations to monitoring in this report. Still, the analyses, the report and the orientations need to have as their starting points the individual states' ratification for each language under the Charter, related to the present situation and development of new media for the RMLs in that state.

As a consequence of the report and its analyses, the ComEx needs to work out a separate document for its monitoring principles, also based on earlier monitoring experiences, and on additional aspects raised by and discussed in the report.

For the future work on this the ComEx might want to discuss further also:

- ▶ the definition of new media and audiovisual production,
- ▶ the spreading effects in society of digitisation within other fields of importance for the Charter, and
- ▶ the jurisprudence of other monitoring bodies in this field.

A further dimension would be to follow up how negative consequences of the marketisation process, global and national, reduce the presence of RMLs in new media and new software. How can RMLs be compensated for this, with the assistance of states parties?

As mentioned, in addition to the questions to be asked to states parties, which need to be clarified and tested before they are established, the monitoring process also requires a similar attempt to collect the views of the representatives of the speakers of RMLs. This may turn out to be a challenge, since it is probable that some demographies are better (or only) represented in the NGOs, than are others.

Since the technological development is, as has been attested, dramatically fast, this type of process of elucidating the relation between the Charter monitoring and the evolving media field may need to be followed by repeated follow-up checks, for example, every 5-6 years.

Based on all these considerations, there is a need to elaborate further guidelines, also since the media is probably the most privatised field of all covered by the Charter. In the light of this, it is crucial to ensure that the state promotes a “realistic” presence of media in RMLs and of RMLs in the media. This requires that such guidelines include an explicit indication of ComEx’s interpretative strategies for all the articles related to media, and in the long-term perspective, for the digitisation process taking place in other fields of society.

The ECRML is not the only international treaty that faces challenges due to legal and human developments. The task of the working group was to deal with new technologies and new media, and to suggest new ways to monitor the Charter. This has been fulfilled by the analyses and recommendations of the external experts. As a further step, earlier experiences of dealing with and reasoning on international treaties in a changing world, need to be taken into account. In a formal sense, such new approaches can represent “subsequent practice” and serve as rules of interpretation of the Charter in the sense of the Article 31.2 (c) of the Vienna Convention on the Law of Treaties.<sup>72</sup>

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72. UNTS, vol. 1155, p. 331.

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